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THE PRESIDENCY

No. 35

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It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 25 of 2007: Securities Transfer Tax Act, 2007



AIDS HELPLINE: 0800-123-22 Prevention is the cure

(English text signed by the President.)
(Assented to 21 December 2007.)

ACT

To provide for the levying of a securities transfer tax in respect of every transfer of any security; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
 - “**close corporation**” means a “corporation” as defined in section 1 of the Close Corporation Act, 1984 (Act No. 69 of 1984);
 - “**closing price**” means the closing price, on the date of the transaction or other manner of acquisition of a listed security, at which that security was traded on the exchange on which it is listed, as determined by that exchange on each day on which trade in that security occurs on that exchange: Provided that where the security was not traded on the date of the transaction or other manner of acquisition, the closing price of that security must be regarded as being the closing price on the last business day, preceding the date of the transaction or other manner of acquisition, on which that security was traded on that exchange;
 - “**Commissioner**” means the Commissioner for the South African Revenue Service;
 - “**company**” means any corporation, or company incorporated, established or formed by or under any law;
 - “**exchange**” means an “exchange” as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), and licensed under section 10 of that Act;
 - “**Income Tax Act**” means the Income Tax Act, 1962 (Act No. 58 of 1962);
 - “**lending arrangement**” means any arrangement in terms of which—
 - (a) a person (hereinafter referred to as the lender) lends a listed security to another person (hereinafter referred to as the borrower) in order to enable that borrower to effect delivery (other than to any lender in relation to that borrower, unless the borrower can demonstrate that the arrangement was not entered into for the purposes of the avoidance of tax and was not entered into for the purposes of keeping any position open for more than 12 months) of that security within 10 business days after the date of transfer of that security from the lender to the borrower in terms of that arrangement;
 - (b) that borrower in return contractually agrees in writing to deliver a listed security of the same kind and quality to that lender within a period of 12 months from the date of transfer of that security from the lender to the borrower in terms of that arrangement;
 - (c) that borrower is contractually required to compensate that lender for any distributions in respect of the listed security which that lender would have been entitled to receive during that period had that arrangement not been entered into; and
 - (d) that arrangement does not affect the lender’s benefits or risks arising from fluctuations in the market value of the listed security, but does not include an arrangement where the borrower has not—

- (i) on-delivered the listed security within the period referred to in paragraph (a); or
- (ii) returned the listed security contemplated in paragraph (b) to the lender within the period referred to in that paragraph;

"listed security" means any security that is listed on an exchange; 5

"lowest price" means the lowest price, on the date of the transaction or other manner of acquisition of a listed security, at which that security was traded on the exchange on which it is listed, as determined by that exchange on each day on which trade in that security occurs on that exchange: Provided that where that security was not traded on the date of the transaction or other manner of acquisition, the lowest price of that security must be regarded as being the lowest price on the last business day, preceding the date of the transaction or other manner of acquisition, on which that security was traded on that exchange; 10

"member" means any person who is an "authorised user" as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), providing such security services as the rules of the exchange permit including services in respect of the buying and selling of a listed security; 15

"Minister" means the Minister of Finance;

"participant" means a person that holds in custody and administers a listed security or an interest in a listed security and that has been accepted in terms of section 34 of the Securities Services Act, 2004 (Act No. 36 of 2004), by a central securities depository as a participant in that central securities depository; 20

"person" includes—

- (a) any sphere of the Government of the Republic;
- (b) any body of persons (incorporated or unincorporated); 25
- (c) the estate of any deceased or insolvent person;
- (d) any trust fund; and
- (e) any portfolio comprised in any collective investment scheme in securities contemplated in Part IV of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002); 30

"prescribed rate", in relation to any interest payable in terms of the Securities Transfer Tax Administration Act, 2007, means such rate as the Minister may fix from time to time by notice in the *Gazette* in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999): Provided that where the Minister fixes a new rate in terms of that Act, that new rate applies for the purposes of the Securities Transfer Tax Administration Act, 2007, from the first day of the second month following the date on which that new rate came into operation; 35

"Republic" means the "Republic" as defined in section 1 of the Income Tax Act;

"security" means—

- (a) any share or depository receipt in a company; 40
- (b) any member's interest in a close corporation; or
- (c) any right or entitlement to receive any distribution from a company or close corporation,

excluding the debt portion in respect of a share linked to a debenture;

"tax" means the tax payable in terms of this Act; 45

"transfer" includes the transfer, sale, assignment or cession, or disposal in any other manner, of a security or the cancellation or redemption of that security, but does not include—

- (a) any event that does not result in a change in beneficial ownership;
- (b) any issue of a security; or 50
- (c) a cancellation or redemption of a security if the company which issued the security is being wound up, liquidated or deregistered or its corporate existence is being finally terminated;

"unlisted security" means any security other than a listed security.

Imposition of tax 55

2. (1) There must be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the securities transfer tax, in respect of every transfer of any security issued by—

- (a) a close corporation or company incorporated, established or formed inside the Republic; or 60